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Before the
FEDERAL COMMUNICATIONS COMMISSION DEC - 6 2002
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of:

**Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations**

(Chillicothe and Ashville, Ohio)

**MM Docket No. 99-322
 RM-9762**

TO: CHIEF, MEDIA BUREAU

PETITION FOR RECONSIDERATION

Franklin Communications, Inc., North American Broadcasting Co and WLCT Radio Incorporated (jointly, the "Petitioners"), by and through their attorneys, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429(2001), hereby submit this "Petition for Reconsideration" of the *Report and Order*, released on October 18, 2002, in the above-referenced proceeding.¹ The *Report and Order* reallocated Channel 227B from Chillicothe to Ashville, Ohio, and modified the license of Station WFCB to specify Ashville, Ohio as the station's community of license.

As discussed in more detail below, the Petitioners object to the reallocation of Channel 227B to Ashville without a condition specifying its licensed transmitter site. The Petitioners filed Joint Comments in the rulemaking proceeding, providing convincing evidence that the proposed reallocation of Channel 227B to Ashville was merely a "pitstop" in the

¹ *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 20,418 (2002). Pursuant to the Commission's rules, a Petition for Reconsideration is due within 30 days of public notice, which in this context, is the publication of a notice of the *Report and Order* in the Federal Register. Notice of the *Report and Order* was published in the Federal Register on November 6, 2002. 67 Fed. Reg. 67,568 (rel. Nov. 6, 2002). As such, the instant Petition for Reconsideration is timely filed.

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 List ABOVE

overarching (and persistent) goal of Secret Communications II, L.L.C. (“Secret”), the licensee of Station WFCB, to make the station a Columbus, Ohio, radio station, resulting in a clear abuse of the Commission’s allotment principles and processes. The Commission largely ignored the Petitioners’ arguments. In the Petitioners’ view, the Commission must reconsider its decision to grant the reallocation without a corresponding condition that the facility be maintained at Station WFCB’s currently licensed site.

BACKGROUND

For the past 12 years, the licensee of Station WFCB has been attempting to move the Station into the Columbus, Ohio market. **As** discussed in the Joint Comments, the previous attempt to move Station WFCB within 10 miles of Columbus was rejected by the Commission.² Perhaps recognizing the boldness of the *Reynoldsburg* proposal, the instant rulemaking proposed the reallocation of Station WFCB to Ashville, which is within 20 miles of Columbus.

The Petitioners objected to the previous attempt, and objected to the Ashville proposal as well. In their Joint Comments, they noted that Secret crafted its Declaration in support of the Ashville proposal so as to permit the relocation of the transmitter site subsequent to the reallocation. Of special note was that Secret specified a site authorized in its unbuilt construction permit for Station WFCB. Subsequently, Secret modified this construction permit (BMPH-2001 1120ABH) to specify a new transmitter site on an existing tower, and received a license authorization to operate from this new site (BLH-20020304AFX). **As** disclosed in its Supplement to Comments filed on June 14, 2002, *pg. 3*, this new site was specified so that Secret

² *Chillicothe, Forest, Lima, New Washington, Peebles and Reynoldsburg, Ohio*, 12 FCC Rcd 13,710 (1996)

could construct its new facility prior to the expiration of the underlying construction permit, which had laid unbuilt for nearly three years. Of course, by moving to an existing site, Secret also saved significant funds by not having to construct its facilities at a new site.

Despite a thorough discussion of the ulterior motives relating to the proposed reallocation, the Commission granted the proposal without the requested condition. Without distinguishing its previous decisions in which it required construction of the allotment at a specified transmitter site, the Commission stated that there may be valid public interest reasons for the change in transmitter site. *Report and Order*, ¶ 5. Moreover, the Commission stated that it was premature to raise the “pitstop” argument at the rulemaking stage, since “an interested party may file an informal objection” against the subsequently-filed construction permit application. *Id.* As discussed herein, both justifications for failing to require construction at the current authorized transmitter site were in clear error and must be reversed.

DISCUSSION

A. Petitioners Have Standing to Seek Reconsideration.

Section 1.429 of the Commission’s rules permit any party who participated in a proceeding to seek reconsideration of a subsequently-issued adverse decision. 47 C.F.R. §1.429(a) (2001). The Petitioners sought to have the Commission either dismiss the reallocation request, or condition such reallocation on the permanent placement of the Asheville allotment at the then-authorized transmitter site. In light of the Commission’s grant of the reallocation proposal, and the denial of the request to place a condition on the station’s license authorization, it is clear that the Petitioners were adversely affected by the *Report and Order*.

In light of their active participation in the proceeding, and the issuance of an adverse decision, the Petitioners have standing to submit the instant Petition for Reconsideration. As discussed herein, the Petitioners request that the Commission set aside the *Report and Order* and either (1) dismiss Secret's reallocation proposal, or (2) impose a condition that Channel 227B at Ashville be operated from the currently licensed transmitter site. *See* 47 C.F.R. 1.429(i) (2001).

B. The Unconditional Reallocation of Channel 227B to Ashville Is Inconsistent With Prior FCC Decisions.

As discussed in the Joint Comments, *pg. 11-12*, the Commission has been faced with similar reallocation requests relating to short-spaced facilities in the past, and has specifically conditioned the construction of the reallocated facility to "ensure that the integrity of the FM Band and the listening public will not be compromised."

Specifically, in *Oceanside*, the Commission was confronted with a grandfathered short-spaced facility that sought to change communities of license, without any corresponding change in the technical facilities of the station. The Commission confirmed that the petitioner met the conditions established in *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992), and granted the proposed reallocation. However, the Commission specifically stated that proponent would be required to file a construction permit specifying the new community of license, **from its currently authorized site**.⁴

As in *Oceanside* and *Newnan*, the reallocation of Channel 227B from Chillicothe to Ashville related to a facility that was a grandfathered short-spaced allocation, for which the Commission has paid special, close attention. However, the Commission provided no

³ *Oceanside and Encinitas, California*, DA 99-1837, 1999 FCC Lexis 4389 (Sept. 10, 1999).

⁴ *Oceanside*, ¶6. *See also Newnan and Peachtree City, Georgia. supra* at ¶ 6 (granting the reallocation, but only at the currently authorized site).

discussion, and certainly did not distinguish, the unconditional reallocation of Channel 227B to Asheville from either *Oceanside* or *Newnan*. In light of the clear precedent requiring a conditional grant of a grandfathered short-spaced reallocation, the *Report and Order* was in clear error, and must be set aside.

C. The Commission Must Address Pitstop Efforts at the Rulemaking Stage.

Another justification for the rejection of the requested conditional grant of the reallocation was that the Petitioners could object to any subsequent move-in to Columbus when the minor modification application was filed. Specifically, the Commission stated that “an interested party may file an informal objection directed against this application raising any issue it deems appropriate.” *Report and Order*, ¶ 5.

While this statement may be technically correct, in reality, any informal objection raising the “pitstop” argument will fall on deaf ears. For example, in a recent letter decision, the Audio Services Division (“ASD”) of the Media Bureau rejected an Informal Objection filed against a minor modification application that moved a recently reallocated facility into an urbanized area.⁵

Specifically, Technicom, Inc. objected to a minor modification of Station WEGY(FM), which had recently received authorization to change community of licenses from Pana to Macon, Illinois. Technicom noted that the application specified a different transmitter site than that in the rulemaking proceeding, and that the proposed service area of the station had changed dramatically so to include an urbanized area that would have otherwise required a *Tuck* analysis had it been presented in a rulemaking proceeding. *Letter Decision*, pg. 2. However, in granting

⁵ *Letter to John Garziglia, Esquire*, dated February 19, 2002, Station WEGY(FM), Pana, Illinois. A copy of this letter is attached hereto as Exhibit A for ease of reference.

the minor modification application, the Commission's staff dismissed the Informal Objection as an untimely petition for reconsideration of the rulemaking proceeding. *Id*

By taking that position, the ASD appears to have taken a position precisely opposite to that announced in the Report and Order in the instant proceeding. That is, here the Petitioners have been told that the appropriate time to raise concerns about such allotment matters is the application stage; but in the Pana situation, when the petitioner sought to raise its concerns at the application stage, it was told that the appropriate time to raise those matters was the rule making stage.

While the Commission may prefer to play such a "heads-I-win-tails-you-lose" game in order to avoid having to consider serious arguments, it may not do so. The Petitioners are entitled to substantive disposition of their arguments, now.⁶

CONCLUSION


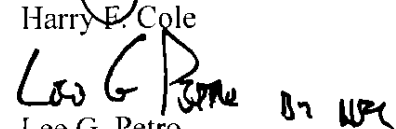
The *Report and Order* must be set aside. The unconditional grant of the reallocation of Channel 227B from Chillicothe to Ashville, Ohio is in direct conflict with past FCC decisions, and would leave the Petitioners with no other recourse to object to Secret's not-so-secret intent to move Station WFCB into Columbus, Ohio.

The Commission has utterly failed to provide any reasonable justification for failing to


⁶ The Commission should note that the Petitioners are not the only ones who have perceived the seemingly inexorable march of various stations, including Station WFCB, in the direction of Columbus. See Attachment B (article from the December 1, 2002 edition of *The Columbus Dispatch*), which includes a cogent summary of such efforts.

follow *Newnan* **and** its progeny, and such actions, if left unfettered, would leave Petitioners unable to object to the impending, implementing minor modification application to make Station WFCB a Columbus radio station

Respectfully submitted,


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*Counsel for Franklin Communications, Inc.,
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December 6, 2002

ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 19 2002

IN REPLY REFER TO: 1800B3-JR

John Garziglia, Esquire
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Washington, D.C. 20006-2334

In re: **Station WEGY(FM), Pana, IL**
Facility ID No. 61225
Construction Permit Modification
File No. BPH-20010731AAY
Kaskaskia Broadcasting, Inc. '
Informal Objection

Dear Counsel:

This letter concerns: (1) the captioned application of Kaskaskia Broadcasting, Inc. ("KBI") to modify its construction permit for Station WEGY(FM), Pana, Illinois (File No. BPH-20010731AAY); and (2) the September 12, 2001 informal objection filed by Technicom, Inc. ("Technicom").¹ For the reasons set forth below, we dismiss and deny the informal objection and grant KBI's application.

Background. KBI sought to change the WEGY(FM) community of license from Pana to Macon, Illinois. With another party² it jointly filed a rule making petition in Docket No. 00-160.³ KBI proposed to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b), by moving Channel 265A from Pana to Macon, Illinois. It also proposed to modify the WEGY(FM) license to specify operation on Channel 365A at Macon in lieu of Pana. The Allocations Branch granted the petition, allotting Channel 265A to Macon and modifying WEGY(FM)'s authorization to specify the new frequency, conditioned on KBI filing a minor modification application to change channels. See Report and Order ("R&O"), *Pana, Taylorville and Macon, Illinois*, 16 FCC Rcd 12,588 (Allocations Br. 2001).⁴ The Allocations Branch indicated that the channel substitution served the public interest by providing Macon with its first local aural service.

¹ KBI filed an opposition on October 16, 2001. Technicom submitted a "Notice of Intent to File Reply" on November 15 and a reply on December 3, 2001.

² Miller Communications, Inc., licensee of Station WMKR(FM) Taylorville, Illinois.

³ See Notice of Proposed Rule Making, *Pana, Taylorville and Macon, Illinois*, 15 FCC Rcd 19,046(2000).

⁴ The Allocations Branch reallocated Channel 232A to Pana to replace Channel 265A.

Informal objection. Technicom, licensee of Station WXFM(FM), Mt. Zion, Illinois, characterizes KBI's application as "part of an overall scheme to abuse Commission processes." It alleges that KBI, in the rule making proceeding, misrepresented the area it intended to serve. According to Technicom, KBI argued the public service benefit of a new local service at Macon in order to deflect attention from its real goal of providing a city-grade signal to all of the Decatur urbanized area.⁵ Technicom, which did not participate in the rule making proceeding, asserts that it was unable to raise this issue previously, because KBI's "deceit" was not revealed until filing of the instant application. Technicom urges revocation of the R&O, dismissal of KBI's application "which seeks to further this deceit," and a license revocation hearing to determine whether KBI is qualified to remain a licensee.⁶

As set forth in the Notice of Proposed Rule Making in Docker No. 00-160, 15 FCC Rcd 19,046 (Allocations Br 2000), interested parties were invited to file comments by October 23, 2000 and reply comments by November 7, 2000 in response to KBI's rule making proposal. As noted, Technicom filed neither. Thus, to the extent that Technicom seeks to participate in the rule making action reassigning WEGY(FM) from Pana to Macon, its informal objection must be considered as an untimely comment which cannot be considered. See *Brookville and Punxsutawney, Pennsylvania*, 3 FCC Rcd 5555, 5556 (MMB 1988) (pleading filed in allotment proceeding which does not comply with rules deemed unacceptable and will not be considered); *Pinewood, South Carolina*, 5 FCC Rcd 7609, 7610 (1988) (counterproposal must be submitted by comment date to be considered in allotment proceeding). The R&O, released June 15, 2001, was published in the Federal Register on June 26, 2001. See 66 FR 33,902. Pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.405, a reconsideration petition *must* be filed within 30 days of Federal Register publication. Therefore, deemed a petition for reconsideration of the rule making action. Technicom's instant pleading is likewise untimely and cannot be considered. See

⁵ Technicom notes that if a reallocation would result in a city-grade contour to more than 50 percent of an urbanized area, the proponent must present a "Tuck" analysis demonstrating that the proposed community is independent of the nearby urbanized area, deserves its own station, and that a proposed community change is not designed to serve the urbanized area. A "Tuck" analysis is not generally required if the 50 percent threshold is not reached.

Technicom asserts that, during the rule making proceeding KBI was aware of Commission policies and concerns about station migration from rural to urbanized areas, yet it proposed reference coordinates at an existing and available tower site away from Decatur, thereby providing 70 dBμ service to less than 50 percent of the Decatur urbanized area. Technicom notes KBI comments regarding the public interest benefits of its proposal referencing Macon's population growth and plans for a southerly extension of Route 51 towards Moweaqua, Illinois and indicating that a site-restricted allotment would lead to city-grade service to Macon and Moweaqua. According to Technicom, the Allocations Branch relied on these comments.

Technicom now alleges that the instant application is evidence that KBI "abandoned its public interest commitments made in the rule making proceeding. It asserts that KBI's application specifies a transmitter site "well north" of the site-restricted coordinates and "on the very edge" of the Decatur urbanized area. According to Technicom, grant of the application will enable WEGY(FM) to provide city-grade service to the entire urbanized area, while the station would not provide such service to Moweaqua and other growing communities along the Route 51 corridor. Technicom maintains that had KBI revealed that it intended to provide city-grade coverage to all of the urbanized area and that it did not intend to utilize the referenced available transmitter site or to serve the growing population and increased traffic along the expanding Route 51 corridor, the rule making proceeding would have had a different outcome. In sum, Technicom argues that the allotment substitution *was* premised on specific facts and that KBI, as applicant, is obliged to propose facilities "serving such facts."

⁶ According to Technicom, failure to do so will encourage "flagrant disregard for the public trust."

Mary R. Kupris, 5 FCC Rcd 5 142 (1990) (Commission lacks authority to waive or extend 30-day period). In sum, whether considered as a rule making comment or as a petition for reconsideration of the rule making action, Technicom's objection is procedurally defective and must be dismissed.

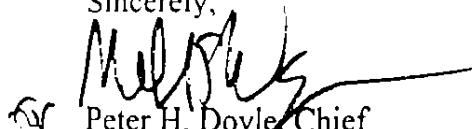
Even if we consider Technicom's submission as an informal objection to KBI's permit application, we would deny it. Its misrepresentation allegation rests solely on the circumstances that KBI's instant proposal would allow WEGY(FM) to provide city-grade service to more of an urbanized area. However, a successful rule making petitioner which subsequently files an implementing modification application is not limited to the reference coordinates previously specified in the context of a rule making proceeding. See *New Directions Media, Inc.*, 15 FCC Rcd 13,158 (2000). Although WEGY(FM) might well compete in the larger Decatur urbanized area, that in and of itself does not signal that the station would not adequately serve Macon, its community of license, see *WBBK Broadcasting, Inc.*, 15 FCC Rcd 5906, 5908 (2000). and Technicom provides no additional credible evidence that WEGY(FM) will not serve Macon.

Finally, the intent to deceive is an essential element to finding misrepresentation. See *Joseph W. Bollinger and Donna M. Bollinger*, 16 FCC Rcd 18,107, 18,108, citing *Swan Creek Communications*, 39 F. 3d 1217, 1222 (D.C. Cir. 1994); *Policy Regarding Character Qualifications in Broadcasring*, 102 FCC 2d 1179, 1196 (1986) (subsequent history omitted). Insofar as Technicom maintains that KBI had a motive not to disclose in the rule making context that its real aim was to provide city-grade service to the entire Urbana urbanized area, its evidence of misrepresentation merely consists of a speculative and conclusory allegation unsupported by credible evidence. Thus, it has failed to meet its burden of raising a substantial and material question of fact warranting further inquiry. See *Garrett, Andrews. & Letizia, Inc.*, 88 FCC 2d 620 (1981) (Commission will not infer improper motive from speculation lacking factual support). Accordingly, we will deny Technicom's objection.

Conclusions/orders. An examination of the application reveals that KBI is qualified to be a Commission licensee. The examination further reveals that a grant thereof would benefit the public interest, convenience, and necessity.

In light of the above, and pursuant to 47 C.F.R. § 0.283: the informal objection filed September 12, 2001 by Technicom, Inc., to the extent it challenges the Report and Order: in Docket No. 00-160, IS DISMISSED, and in all other respects IS DENIED; and the application of Kaskaskia Broadcasting, Inc. for a construction permit to modify the facilities of Station WEGY(FM), Pana, Illinois (File No. BPH-2001073 IAAY) IS GRANTED. The authorization is enclosed.

Sincerely,



Peter H. Doyle, Chief
Audio Services Division
Mass Media Bureau

cc: John S. Neely, Esquire

ATTACHMENT B

The Columbus Dispatch

PUMPING UP

CLEAR CHANNEL'S plan to put three more radio stations in the central Ohio market has sparked opposition by the competition.

Sunday, December 1, 2002
BUSINESS OIH

Illustration: Photo

By Tim Feran
THE COLUMBUS DISPATCH

Stuck in morning rush-hour traffic recently, Columbus drivers could listen to a variety of radio programs.

At WTVN (610 AM), Bob Conners mused over a picture of an NFL quarterback who appeared to have extra-long fingernails.

Woody Johnson at WCOL (92.3 FM) chatted with his co-hosts about some statistics on female drivers.

The WNCI (97.9 FM) Morning Zoo giggled when a Jackass cast member described a painful stunt involving his genitals.

A comedian drew laughs from Bob and Tom on the Fox, WFJX (105.7 FM), when he explained that Kentuckians have a hard time with Nativity scenes because they mistake the Three Wise Men for Taliban.

And, over at the Zone, WZNW (1230 AM), a sports anchor reported on the Blue Jackets' victory the previous evening.

Most listeners probably didn't realize that these five shows had something in common: They're all on stations owned by **Clear Channel** Communications.

And few listeners, if any, are aware of the legal battle to bring three more **Clear Channel**-owned or -controlled stations onto Columbus airwaves.

For listeners, the addition of three stations might mean nothing more than a few more classic-rock stations, more trivial chitchat in the morning or another country-music outlet on the dial.

But for several companies and organizations -- ranging from a leading national broadcaster to a tiny local radio operator -- three new stations

How Clear Channel stacks up

Clear Channel's five Columbus stations, their Arbitron ratings share and their position in the most-recent survey of listeners 12 and older:

WNCI (97.9 FM)

contemporary hits

9 share* / No. 1 in survey

WTVN (610 AM)

news, talk

8.1 share / No. 2 in survey

WCOL(92.3 FM)

country

5.5 share/ No. 5 in survey

WFJX (105.7 FM)

classic rock

2.6 share / No. 13 in survey

raises troubling questions: Is **Clear Channel** flouting anti-monopoly regulations, and will radio, in its quest for profits, stop serving smaller communities?

Clear Channel owns more than 1,000 stations and is the nation's and Ohio's largest radio company. Its five Columbus stations are the area's leading earners of radio ad revenue, taking in 36 percent of the market's roughly \$95 million pot.

The company began its explosive growth after Congress loosened limits on station ownership as part of a 1996 telecommunications deregulation law. **Clear Channel's** push to buy stations included a merger with Jacor Communications in 1999. Its central Ohio holdings are a result of that merger.

While government deregulation allowed companies to own more stations and save money by sharing resources, the rapid expansion has created some concerns. Big companies could own so many stations in a market that they could control ad prices and squeeze out competitors.

Such concerns became an issue four years ago, when Jacor was in the middle of acquiring Nationwide Communications, then the market leader in central Ohio. To calm fears from the Justice Department's antitrust division, Jacor shed three Columbus stations -- WLVQ (96.3 FM), WHOK (95.5 FM) and WAZU (107.1 FM) -- to complete the Nationwide deal.

This year, through a series of maneuvers worthy of a chess grandmaster, critics say **Clear Channel** has moved to replace them with three others.

* On Aug. 29, the owner of Marion's WMRN (106.9 FM), a subsidiary of **Clear Channel**, asked the Federal Communications Commission to allow it to move to Dublin and change its frequency to 106.7 FM.

* To make that move, the owner of Hillsboro's WSRW (106.7 FM), another **Clear Channel** subsidiary, asked to move to Chillicothe and change its frequency to 106.5 FM.

* Earlier this year, **Clear Channel's** Chillicothe station WFCB, (then at 94.3 FM), changed formats and call letters with Chillicothe's WKKJ (93.3 FM).

The new WFCB (93.3 FM) is owned by Secret Communications, which many maintain is a front for **Clear Channel**. Since the format and call-letter change, Secret Communications' owner, Frank E. Wood, a former president of Jacor, has petitioned the FCC to move WFCB to Ashville from its current site west of Circleville.

Like the moves at WMRN-FM and WSRW-FM, that would bring the station close enough to Columbus to effectively make it a Columbus station, critics say.

But **Clear Channel** argues that its moves are a win-win situation. They would serve listeners currently underserved without depriving other listeners of radio service.

Clear Channel's proposal says that after it moves its stations, Marion still would have radio service from three stations, Chillicothe would have another station on top of its current roster of seven, and Hillsboro

WZNW (1230 AM)

sports-oriented news talk

0.7 share / No. 22 in survey

*Radio market share is the percentage of listeners tuned to a particular station

Sources: Dispatch research

would continue to be served by an AM station.

Further, Clear Channel says that its moves would mean that another area would have its own station for the first time. Clear Channel says "(Dublin) is sufficiently independent of the central city to justify a first local service preference."

But opponents say Clear Channel's reasoning is flawed

"Philosophically, I think the migration of stations toward dollars is not consistent with the public-service obligation that we all live under," said Matt Mnich, owner of WBZX (99.7 FM), WEGE (103.9 FM) and WMNI (920 AM). A coalition of Columbus-area broadcasters calling itself the Committee for Competitive Columbus Radio is opposing Clear Channel's efforts. CBS-Viacom subsidiary Infinity Broadcasting, owner of WLVQ, WAZU and WHOK and one of the largest radio companies in the country, also opposes Clear Channel.

Clear Channel's opponents ridicule the notion that Dublin is somehow an independent entity and that WMRN-FM would not target Columbus, which has **34** commercial stations.

There is precedent for such a move, however. Clear Channel successfully used a similar argument in moving the Fox, WFJX, to Hilliard from Marysville in 2000.

In that instance, Clear Channel argued that the move served the public interest by creating Hilliard's first station, and "Hilliard is sufficiently independent" of Columbus to warrant its own station. The FCC agreed.

WWCD (101.1 FM) owner Roger A. Vaughan, who filed an objection with the FCC, said he is "still in shock that somebody was able to prove that Hilliard was a separate city, distinct from Columbus."

That experience leaves Vaughan pessimistic that Clear Channel's latest moves can be stopped

"In an environment whereby Hilliard can be declared separate from Columbus," Vaughan said, "I would say their appeals make perfect sense."

Dave Robbins, general manager of WLVQ, WHOK and WAZU, agreed

"They have a successful history of doing 'move-ins' in other markets, so this is not a surprise," Robbins said.

Clear Channel officials, when contacted for this story, said the company did not comment on filings under consideration at the FCC and that the documents speak for themselves.

Two unexpected wrinkles could trip **up** Clear Channel

One of Clear Channel's opponents is Sandyworld, radio engineer Kurt Tuckerman's tiny operation that owns 106.7FM, a small FM station serving the area around the Ohio State University campus. It's the same frequency as the Marion station.

Sandyworld's petition to the FCC complains that moving WMRN-FM would cause so much interference to 106.7FM that the small station would cease operations.

The service that 106.7 FM provides is simulcasting WOSU-FM, a public broadcasting station owned by OSU.

The fact that Clear Channel's move would interfere with a public, nonprofit broadcaster might be too much for the FCC to accept, some broadcasters said. The other complication was caused by Clear Channel's own attorney, who filed comments in support of the station maneuvers one day after the FCC's deadline.

Even so, Andrew Jay Schwartzman, president of the Media Access Project, a consumer-advocacy law firm, said Clear Channel's strategy of moving outlying stations closer to a metropolitan area is standard operating procedure.

"It's not unique to Clear Channel although they are one of the more-adept practitioners of the art," Schwartzman said.

While the FCC mulls the arguments, the parties can only wait

"Clear Channel is doing the best they can to achieve their business goals," said Alan Goodman, general manager of WSNY (94.7 FM) and WVKO (1580 AM), "but it's really **up** to the FCC to stop this stuff. Until they put their foot down, it's going to keep going."

tferan@dispatch.com

Caption: (1) FRED SQUILLANTE | DISPATCH PHOTO ILLUSTRATION

(2) Logo

(3) Logo

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CERTIFICATE OF SERVICE


I, Harry F. Cole, hereby certify that on this 6th day of December, 2002, I caused copies of the foregoing "Petition **for** Reconsideration" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

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